



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/10599/2014

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 20 November 2015**

**Determination Promulgated  
On 15 December 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER**

**Between**

**HG  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Grace Capel, Counsel, instructed by Migrant Legal Project

For the Respondent: Mr Irwin Richards, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a young asylum seeker who might be at risk just by reason of being identified.
2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds

against a decision taken on 10 November 2014 refusing to grant him leave to remain and to remove him to Yemen.

### **Introduction**

3. The appellant is a citizen of Yemen born in 1983.
4. The appellant originally claimed asylum because of his son's medical condition, after arriving in the UK on 19 July 2014 with his wife (DS) and their three children (A, Ma and MI), all with valid visit visas. The reason for coming to the UK was to attend a medical event in Exeter. In his screening interview on 25 July 2015, the appellant stated that he realised that Ma could not go back to Yemen on 21 July 2014 after Ma received intensive medical treatment in Exeter University and he was told that Ma was receiving insulin incorrectly in Yemen. They were prescribed treatment that does not exist in Yemen. Ma has an insulin gene mutation and type 1 diabetes.
5. At his asylum interview on 9 October 2014 the appellant stated that new things had happened in Yemen after the screening interview. A person known as BN was involved in a car accident with the appellant near the President's palace. A guard witnessed the accident and caught BN. However, BN was released because he had contacts and powers. The appellant won a subsequent court case in May 2013. The appellant worked for the Danish Red Cross and was threatened by BN's friends and his cousin. BN went to Sadah and was a Houthi militant. The appellant resigned from the Danish Red Cross on 31 December 2012. It was the Houthi group who threatened him. The appellant relocated from Safiya to Sana'a in July 2013. The court case was finalised on 14 August 2014 and the appellant's house was raided on 3 September 2014. His brother in law was shot and taken to hospital. The appellant's brother was in a car that was stopped on 6 February 2015 and he was kidnapped on 24 February 2015. He is still missing.
6. The respondent accepted that the Houthi have been in control of Sana'a since 21 September 2014 but the appellant's claim that the Houthi were still targeting him was not accepted. There was a sufficiency of protection in Yemen; the appellant stated that there was an arrest warrant for BN and the Houthi members who helped him; dated 8 September 2014. Ma's medical condition did not reach the Article 3 standard.

### **The Appeal**

7. The appellant appealed to the First-tier Tribunal and attended a hearing at Newport on 5 March 2015. The judge found that the appellant came to the UK for free medical treatment for Ma and had known since 2011 that Ma required an insulin pump. The medical evidence was that Ma would survive without the insulin pump. After the screening interview the appellant became aware that the application was unlikely to succeed on the basis of Ma's medical condition and so he fabricated the car accident

story. There was no evidence that BN was a member of Al Houthi and even if he was the judge did not accept that he threatened the appellant. If the serious threats had happened then the appellant would have mentioned them at the screening interview. If he had left the Danish Red Cross because of threats then he would have moved home at the same time and much further away than just another area of the city. There was no medical evidence that the brother in law was injured as claimed. The judge did not accept that the family home was attacked on 3 September 2014.

### **The Appeal to the Upper Tribunal**

8. The appellant sought permission to appeal on 29 April 2015 on the basis that the judge failed to consider the medical evidence that the brother in law had been shot (O25 in the respondent's bundle), failed to substantively consider humanitarian protection (ground 2) and erred in law by making adverse credibility findings when the evidence was that the appellant did not have a well-founded fear based upon fear of the Houthi and the security situation in Yemen until after he had claimed asylum and attended the screening interview (ground 3).
9. Permission to appeal was granted by Upper Tribunal Judge Coker on 3 June 2015 on the basis that it was arguable that the judge failed to take account of the medical evidence and the arrest warrant relating to the brother in law. It was also arguable that the judge failed to consider and make findings on paragraph 339C (iii) of the Immigration Rules. All grounds were arguable.
10. In a rule 24 response dated 9 June 2015, the respondent sought to uphold the judge's decision on the basis that the findings were open to the judge and that the appellant's case for humanitarian protection hinged on the same issues, there was no need for the judge to recount the arguments advanced by the appellant again.
11. Thus, the appeal came before me.

### **Discussion**

12. Ms Capel submitted that the medical evidence was before the judge and was not weighed at all in the credibility assessment. That was material because the judge took into account the absence of evidence. The evaluation of the situation after the appellant left Yemen was a key factor in the appeal. In relation to ground 2, paragraph 339C was raised by the appellant but there was no consideration of the general security situation in Yemen, despite the substantial objective evidence submitted by the appellant. In relation to ground 3, the findings were infected by error because the *sur place* claim was made after the screening interview.
13. Mr Richards conceded that there were difficulties with paragraph 65 of the decision and accepted that there was a material error of law. The judge did not consider one important piece of evidence.

14. I find that the judge clearly stated at paragraph 65 of the decision that the appellant had not produced any medical evidence stating his brother in law's injuries. That is not correct; the medical evidence appears in the respondent's bundle. Mr Richards' concession was correct and I find that the judge has materially erred in law by failing to consider relevant and important evidence. I have not found it necessary to make findings on the remaining grounds although it is clear that the humanitarian protection claim will require anxious scrutiny at the *de novo* hearing.
15. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

### **Decision**

16. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be *de novo* with all issues to be considered again by the First-tier Tribunal.
17. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined *de novo* by a judge other than the previous First-tier judge.

Signed



Date 3 December 2015

Judge Archer  
Deputy Judge of the Upper Tribunal